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C O N F I D E N T I A L ZAGREB 002041

SIPDIS

DEPT FOR AC - A/S REDEMAKER AND EUR/SCE-MNARDI
DEFENSE FOR OSD - RICARDEL

E.O. 12958: DECL: 09/18/2013

TAGS: [PREL](#) [KAWC](#) [HR](#) [NATO](#)

SUBJECT: FOREIGN MINISTER PICULA SEEKS USG COMMENT ON
ARTICLE 98 OPTION

REF: ZAGREB 1887

CLASSIFIED BY: POLOFF JUSTIN FRIEDMAN, REASONS 1.5 (B) & (D)

1. (C) SUMMARY AND ACTION REQUEST: THE AMBASSADOR MET ONE-ON-ONE WITH FOREIGN MINISTER PICULA ON SEPTEMBER 17 TO DISCUSS KEY BILATERAL ISSUES IN ADVANCE OF HIS AND PRESIDENT MESIC'S TRIP TO NEW YORK FOR THE UNGA (IRAQ TROOP CONTRIBUTION COVERED SEPTEL). ASKED BY THE AMBASSADOR ABOUT THE STATUS OF A GOC PROPOSAL FOR AN ARTICLE 98 AGREEMENT, AS WAS PROMISED TO US IN JUNE (REFTEL), PICULA SAID AN ARTICLE 98 AGREEMENT WOULD BE DIFFICULT IN THE CURRENT CLIMATE. CONSISTENT WITH PREVIOUS GOC DISCUSSIONS, HE OFFERED TO NEGOTIATE AN AGREEMENT IN THE CONTEXT OF A SOME FORM OF MUTUAL LEGAL ASSISTANCE AGREEMENT. NOTE: PICULA RAISED THIS OPTION WITH AMBASSADOR LINO IN JUNE, TO WHICH LINO RESPONDED THAT DESPITE THE WEAKNESSES INHERENT IN THIS OPTION, THE USG WOULD CONSIDER A GOC PROPOSAL. PICULA HANDED THE AMBASSADOR A NON-PAPER (TEXT PARA 2) STATING THE GOC'S CURRENT POSITION AND INVITED A U.S. RESPONSE. POST REQUESTS WASHINGTON RESPONSE TO THE APPROACH SUGGESTED BY MINISTER PICULA. END SUMMARY AND ACTION REQUEST.

2. (SBU) BEGIN GOC ARTICLE 98 POINTS (NOTE INTERNAL NUMBERING):

REPUBLIC OF CROATIA
MINISTRY OF FOREIGN AFFAIRS

TALKING POINTS

FOR A MEETING BETWEEN CROATIAN MINISTER OF FOREIGN AFFAIRS TONINO PICULA AND THE US AMBASSADOR RALPH FRANK (ARTICLE 98 AGREEMENT)

1. STARTING FROM THE DIFFERENT POSITIONS OF THE UNITED STATES AND THE EU ON THE LEGAL NATURE AND PERMISSIBILITY OF SPECIAL AGREEMENTS ON NON-EXTRADITION TO THE ICC, AS WELL AS THE CROATIAN INTERNAL POLITICAL RELATIONS RELATED TO THE FACT THAT CROATIA CURRENTLY HAS AND WILL HAVE AN OBLIGATION TO COOPERATE WITH THE ICTY, WE NEED TO STATE THAT THE MANEUVERING SPACE IS RATHER LIMITED.

2. DURING THE FIRST ROUND OF TALKS WITH THE US REPRESENTATIVES HELD IN JUNE 2003 IT WAS STATED THAT THE ARTICLE 98 AGREEMENT (AS PROPOSED) IS HARDLY ACCEPTABLE FOR CROATIAN SIDE, ESPECIALLY IN LIGHT OF THE CLEAR STAND OF CROATIAN PUBLIC OPINION.

* ADDITIONALLY, IN ACCORDANCE WITH OUR CONSTITUTION SUCH AN AGREEMENT SHOULD BE RATIFIED IN THE PARLIAMENT, WHICH COULD POSE AN ADDITIONAL PROBLEM.

3. THE CROATIAN SIDE SUGGESTED THAT THE PROBLEM CAN BE SOLVED WITHIN THE FRAMEWORK OF A WIDER AGREEMENT ON EXTRADITION AND LEGAL ASSISTANCE (OR JUST THE EXTRADITION AGREEMENT).

4. THE ELEMENTS OF SUCH AN AGREEMENT COULD BE AS FOLLOWS:

A) INSTEAD OF CONCLUDING A SPECIAL AGREEMENT ON NON-EXTRADITION TO THE ICC, A SUITABLE PROVISION COULD BE INCLUDED IN THE AGREEMENT BETWEEN CROATIA AND THE US ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE (ALTERNATIVELY IN EXTRADITION AGREEMENT OR TWO SEPARATE AGREEMENTS CAN BE CONCLUDED). SUCH AN AGREEMENT DOES NOT EXIST UP TO DATE AND THE AGREEMENT CONCLUDED BETWEEN THE US AND THE KINGDOM OF SERBIA, TAKEN BY SUCCESSION OVER BY CROATIA, IS CURRENTLY IMPLEMENTED.

B) IN THE AGREEMENT, WHICH BY ITS NATURE SHOULD BE DETAILED AND IT SHOULD ENCOMPASS DIFFERENT FORMS OF LEGAL ASSISTANCE, THERE WOULD BE A PROVISION THAT WOULD NOT BE EXPLICITLY REFERRING TO THE ROME STATUTE. INSTEAD, IT WOULD BE A PROVISION THAT WOULD GENERALLY DEAL WITH MUTUAL EXTRADITION ISSUES AND THE IMPLEMENTATION OF THE PRINCIPLE &AUT DEDERE, AUT JUDICARE (TO PROSECUTE OR TO EXTRADITE).

ZAGREB, 17 SEPTEMBER 2003

END GOC POINTS.

FRANK

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